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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA10-1187

BRIAN WOODALL APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILDREN APPELLEES	**Opinion Delivered** MARCH 30, 2011 APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. JV-09-47] HONORABLE PHILLIP T. WHITEAKER, JUDGE AFFIRMED

CLIFF HOOFMAN, Judge

Appellant Brian Woodall appeals from an order of the Lonoke County Circuit Court terminating his parental rights to his children, M.W., B.W., J.W., A.W., and K.W., ages three, six, eight, nine, and fourteen, respectively.[1] We affirm.

On February 22, 2009, the Department of Human Services (DHS) exercised a seventy-two- hour hold on the children after one of the children's half-siblings who lived in the home, E.B., alleged that Woodall had been sexually abusing her,[2] and the investigation

[1] Elizabeth Rehmus, the mother of M.W., B.W., J.W., A.W., and E.B.; Kimberly Blankenship, the mother of K.W.; and David Berg, the father of E.B., all had their parental rights terminated; however, these parties are not the subject of this appeal.

[2] Woodall was subsequently convicted and sentenced to twenty-five years' imprisonment based on E.B.'s allegations.

revealed that the home in which the children lived was environmentally unsafe. The circuit court granted an order for emergency custody and later adjudicated the children dependent-neglected based on environmental neglect and sexual abuse. A permanency-planning order was entered on May 5, 2010, in which the court determined that it was in the best interest of the juveniles that the goal of the case be termination of parental rights/adoption. The court determined that return to any of the parents was not an option at the time and that no parent had substantially complied with the case plan or made substantial progress in this matter.

On June 14, 2010, DHS and the attorney ad litem filed a joint petition for termination of Woodall's parental rights. After a hearing on the matter, the trial court entered an order on August 23, 2010, terminating Woodall's parental rights and granting to DHS the power to consent to adoption. The court found that DHS had proven by clear and convincing evidence that the juveniles had a high likelihood of being adopted, that a termination of their parents' parental rights was in their best interest, and that it was contrary to the welfare of all of the juveniles to return to the care and custody or control of any of the parents. The statutory ground for termination was that "a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent." Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*) (Supp. 2009).

This court reviews termination-of-parental-rights cases de novo. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the trial court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

The trial court's order of termination must be based upon findings by clear and convincing evidence that termination is in the best interest of the child and that one or more of the statutory grounds for termination exists. Ark. Code Ann. § 9-27-341(b)(3). The determination of the best interest of the juvenile shall include consideration of the following factors:

> (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and
> (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents . . . .

Ark. Code Ann. § 9-27-341(b)(3)(A). Woodall argues that the trial court erred in finding that termination of parental rights was in the best interest of the children because there was no credible evidence regarding the likelihood that they would be adopted. He claims that the

DHS family service worker, Bridgette Austin, provided no credible foundation upon which to base her personal belief that the children were adoptable; that Austin failed to clarify the extent of the medical needs of some of the children; and that she had no idea whether there were any prospective families to adopt the children.

DHS argues that Woodall's challenge of the adoptability evidence was not preserved because it was not raised below; however, in a civil, nonjury trial, a party who does not challenge, or does not properly challenge, the sufficiency of the evidence does not waive the right to do so on appeal. *Ridenhour v. State*, 98 Ark. App. 116, 250 S.W.3d 566 (2007).

DHS contends that Woodall's arguments are not grounds for reversal. The likelihood of adoption is one factor to consider in the best-interest analysis. There is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005).

DHS argues that the family service worker's testimony showed that DHS had been working to find adoptive placements for the children and showed that the family service worker was aware of behavioral issues with one child but that this was not an insurmountable barrier to adoption. The family service worker testified that the children had been provided educational and counseling services. She testified that A.W. had been acting out and having

sexual tendencies that they were working on in counseling. The following is Austin's testimony on the likelihood of adoption:

> Brian Woodall is incarcerated and he has a sentence of 25 years, so he can't have the children back. I believe that these children are adoptable. I believe that all children are adoptable, but especially—I can go from the bottom. B.W. and M.W. are healthy. They don't have any medical needs. J.W. and A.W., they do have some medical needs, but I believe that they could be adopted as well. E.B. and K.W., they were both asked if they wanted to be adopted and I believe both of them would be adopted and they're healthy. They don't have any issues at this point. . . . It is in the best interest of these children for parental rights to be terminated so that a permanent plan can be implemented for them. Adoption is the permanent plan. I am asking for authority to divide the children, if necessary, for an adoption maybe into two sibling groups. I believe we have one prospective adoptive family for some of the children but not all of the children. And the adoption specialist is supposed to be working on finding matches for these people that will take, you know, at least like the bottom four or five together to try to keep them all together.

While this court has reversed an order of termination where there was no evidence of adoptability introduced and thus no consideration by the circuit court of this factor, *Haynes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 28, that is not the situation before us. This court has distinguished *Haynes* as applying only when there was absolutely no testimony from which the court could consider the child's adoptability. *Welch v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 798, 378 S.W.3d 290. In *Welch*, we held that the circuit court complied with the statute requiring consideration of adoptability where the caseworker opined her beliefs that the child was adoptable and that the foster parents might adopt the child, and the circuit court made a specific finding. *Id.* Here, the caseworker opined that the children were adoptable and stated that there was one prospective family for some of the

children. The circuit court had evidence with which to consider the likelihood of adoption and made a finding that the juveniles were likely to be adopted. The termination order is affirmed.

Affirmed.

HART and ROBBINS, JJ., agree.